

ORIGINAL

CONTRACT RESULTING FROM INVITATION TO BID NUMBER 10089900-22-R, Library Books, Visual Audio Materials, Music Scores, and Processing Services

This Contract (Contract) is entered into by and between the City of San Diego, a municipal corporation (City), and a successful bidder to Invitation to Bid # 10089900-22-R, Library Books, Visual Audio Materials, Music Scores, and Processing Services (Contractor).

RECITALS

City issued Invitation to Bid # 10089900-22-R (ITB), including any exhibits or addenda thereto, to prospective bidders on goods and services to be provided to the City. The ITB is attached hereto as Exhibit A and incorporated herein by this reference.

City has determined that Contractor has the expertise, experience, and personnel necessary to provide the goods and services.

City wishes to retain Contractor for Library Books, Visual Audio Materials, Music Scores, and Processing Services as further described in the Scope of Work, attached hereto as Exhibit B (Goods and Services), and incorporated herein by this reference.

For good and valuable consideration, the sufficiency of which is acknowledged, City and Contractor agree as follows:

**ARTICLE I
CONTRACTOR SERVICES**

1.1 Scope of Work. Contractor must provide the Goods and Services to City as described in Exhibit B. Contractor will submit all required forms and information described in Exhibit A to the Purchasing Agent before providing Goods and Service.

1.2 General Contract Terms and Provisions. This Contract incorporates by this reference the General Contract Terms and Provisions, attached hereto as Exhibit C.

**ARTICLE II
DURATION OF CONTRACT**

2.1 Term. This Contract will be for a period of five (5) years beginning on the Effective Date. The term of this Contract must not exceed five (5) years unless approved by the City Council by ordinance.

2.2 Effective Date. This Contract will be effective on the date it is both executed by the last Party to sign the Contract and approved by the City Attorney in accordance with San Diego Charter Section 40.

Signature: Lee Ann Queen
Lee Ann Queen (Oct 5, 2022 09:50 EDT)
Email: queenl@baker-taylor.com

**ARTICLE III
COMPENSATION**

3.1 Amount of Compensation. City will pay Contractor for all Goods and Services rendered in accordance with this Contract in an amount not to exceed \$15,000,000.00 (The not to exceed amount will be added in this final Contract prior to the final execution of the Contract by the City, with the Contractor's initials indicating acceptance. In no case may the not to exceed amount exceed \$3,000,000 without prior City Council authorization.)

LAQ
LAQ
Initial/Date
Oct 5, 2022

**ARTICLE IV
WAGE REQUIREMENTS**

4.1 By submitting a response to this ITB, Contractor certifies that he or she is aware of, and agrees to comply with, the wage provisions described in Exhibit D, Wage Requirements, which is incorporated herein by reference, before commencing Services.

**ARTICLE V
CONTRACT DOCUMENTS**

5.1 Contract Documents. The following documents comprise the Contract between the City and Contractor: this Contract and all exhibits thereto; the Notice to Proceed; and the City's written acceptance of exceptions or clarifications to the ITB, if any.

5.2 Contract Interpretation. The Contract Documents completely describe the goods and services to be provided. Contractor will provide any goods and services that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result whether or not specifically called for or identified in the Contract Documents. Words or phrases which have a well-known technical or construction industry or trade meaning and are used to describe goods and services will be interpreted in accordance with that meaning unless a definition has been provided in the Contract Documents.

5.3 Precedence. In resolving conflicts resulting from errors or discrepancies in any of the Contract Documents, the Parties will use the order of precedence as set forth below. The document highest in the order of precedence controls. Inconsistent provisions in the Contract Documents that address the same subject, are consistent, and have different degrees of specificity, are not in conflict and the more specific language will control. The order of precedence from highest to lowest is as follows:

- 1st This Contract Resulting From Invitation To Bid Number 10089900-22-R
- 2nd The ITB and the City's written acceptance of any exceptions or clarifications to the ITB, if any

3rd Contractor's Pricing

5.4 Counterparts. This Contract may be executed in counterparts, which, when taken together, will constitute a single signed original as though all Parties had executed the same page.

5.5 Public Agencies. Other public agencies, as defined by California Government Code section 6500, may choose to use the terms of this Contract, subject to Contractor's acceptance. The City is not liable or responsible for any obligations related to a subsequent Contract between Contractor and another public agency.

IN WITNESS WHEREOF, this Contract is executed by City and Contractor acting by and through their authorized representatives.

CONTRACTOR

Baker & Taylor, LLC

Bidder

2810 Coliseum Centre Dr. - Ste. 300

Street Address

Charlotte, NC 28217

City

704-219-4952

Telephone No.

queenl@baker-taylor.com

E-Mail

BY:

Lee Ann Queen

Lee Ann Queen (Jul 29, 2022 16:06 EDT)

Signature of Bidder's Authorized Representative

Lee Ann Queen

Print Name

Director-Pricing Services

Title

Jul 29, 2022

Date

CITY OF SAN DIEGO
A Municipal Corporation

BY: 

Print Name:

Alia Khouri, DCOO

Deputy Chief Operating Officer

03/16/2023

Date Signed

Approved as to form this 17th day of

March

, 20 23

MARA W. ELLIOTT, City Attorney

BY: 

Jon Dwyer (Mar 17, 2023 12:29 PDT)
Deputy City Attorney







2_SIGNATURE PAGE

Final Audit Report

2022-07-29

Created:	2022-07-29
By:	Sandra Vasquez (SMVasquez@sandiego.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAAaryKhDdPCKJN9T01wrlwomXvZmGRHr9

"2_SIGNATURE PAGE" History

-  Document created by Sandra Vasquez (SMVasquez@sandiego.gov)
2022-07-29 - 7:46:12 PM GMT- IP address: 156.29.5.177
-  Document emailed to queenl@baker-taylor.com for signature
2022-07-29 - 7:47:33 PM GMT
-  Email viewed by queenl@baker-taylor.com
2022-07-29 - 8:01:48 PM GMT- IP address: 104.129.204.254
-  Signer queenl@baker-taylor.com entered name at signing as Lee Ann Queen
2022-07-29 - 8:06:44 PM GMT- IP address: 104.129.204.254
-  Document e-signed by Lee Ann Queen (queenl@baker-taylor.com)
Signature Date: 2022-07-29 - 8:06:46 PM GMT - Time Source: server- IP address: 104.129.204.254
-  Agreement completed.
2022-07-29 - 8:06:46 PM GMT



Purchasing & Contracting Department

September 27, 2022

VIA EMAIL TO: bids@baker-taylor.com

Ms. Lee Ann Queen, Director -- Pricing Services
Baker & Taylor LLC
2810 Coliseum Centre Drive, Ste. 300
Charlotte, NC 28217

**Subject: Invitation to Bid (ITB) No. 10089900-22-R, Library Books, Visual Audio
Materials, Music Scores, and Processing Services**

Dear Ms. Queen:

On May 6, 2022, the City of San Diego received Baker & Taylor's list of exceptions to the terms of the Contract related to the above-referenced solicitation (attached). On September 26, 2022, the City received your request to modify the terms of the contract.

Exhibit A, item A.2.2 of the subject ITB, states, in pertinent part: "Any exceptions to the Contract that have not been accepted by the City in writing are deemed rejected. The City, in its sole discretion, may accept some or all of bidder's exceptions, reject bidder's exceptions and deem the bid non-responsive, or award the Contract without bidder's proposed exceptions."

This letter confirms our agreement to modify the following terms of the Contract relating to the above-referenced solicitation:

1. Article VII. Indemnification and Insurance, 7.2.5.4 Waiver of Subrogation of the City's General Contract Terms and Provisions, shall be ~~deleted~~ in its entirety.

Please indicate your agreement with the above by signing the bottom of this letter. Thank you for your assistance.

Sincerely,

Renealdo M. Flores

Renealdo M. Flores
Senior Procurement Contracting Officer, Purchasing & Contracting

This Letter is executed by the City and Contractor acting by and through their authorized representatives.

BAKER & TAYLOR LLC

THE CITY OF SAN DIEGO

By: Lee Ann Queen

By: ABR

Name: Lee Ann Queen

Name: Claudia C. Barca

Title: Director Pricing Services

Title: Director Purchasing & Contracting

Date: 9-28-2022

Date: October 8, 2022

Attachments:

1. May 6, 2022 Solicitation response from Baker & Taylor LLC with list of exceptions.
2. September 26, 2022 email from Baker & Taylor LLC request to withdraw item #1 of exceptions.

**EXHIBIT A
INSTRUCTIONS AND BID REQUIREMENTS**

A. BID SUBMISSION

1. Timely Bid Submittal. Bids must be submitted as described herein to the Purchasing & Contracting Department (P&C).

1.1 Reserved.

1.2 Paper Bids. The City will accept paper bids in lieu of eBids. Paper bids must be submitted in a sealed envelope to the Purchasing & Contracting Department (P&C) located at 1200 Third Avenue, Suite 200, San Diego, CA 92101. The Solicitation Number and Closing Date must be referenced in the lower left-hand corner of the outside of the envelope. Faxed bids will not be accepted.

1.2.1 Due to COVID-19, electronic copies submitted through PlanetBids will be accepted. Instructions for electronic submissions are provided as an attachment in PlanetBids.

1.3 Bid Due Date. Bids must be submitted prior to the Closing Date indicated in the eBidding System. E-mailed and faxed bids will not be accepted.

1.4 Pre-Bid Conference. No pre-bid conference will be held for ITB.

1.4.1 Reserved.

1.5 Questions and Comments. Written questions and comments must be submitted electronically via the eBidding System no later than the date specified on the eBidding System. Only written communications relative to the procurement will be considered. The City's eBidding System is the only acceptable method for submission of questions. All questions will be answered in writing. The City will distribute questions and answers without identification of the inquirer(s) to all bidders who are on record as having received this ITB via its eBidding System. No oral communications can be relied upon for this ITB. Addenda will be issued addressing questions or comments that are determined by the City to cause a change to any part of this ITB.

1.6 Contact with City Staff. Unless otherwise authorized herein, bidders who are considering submitting a bid in response to this ITB, or who submit a bid in response to this ITB, are prohibited from communicating with City staff about this ITB from the date this ITB is issued until a contract is awarded.

2. Submission of Information and Forms.

2.1 Completed and signed Contract Signature Page. If any addenda are issued, the latest Addendum Contract Signature Page is required.

2.2 Exceptions requested by bidder, if any. The bidder must present written factual or legal justification for any exception requested to the Scope of Work, Contract, or the Exhibits. Any exceptions to the Contract that have not been accepted by the City in writing are deemed rejected. The City, in its sole discretion, may accept some or all of bidder's exceptions, reject bidder's exceptions and deem the bid non-responsive, or award the Contract without bidder's proposed exceptions.

2.3 The Contractor Standards Pledge of Compliance Form.

2.4 Equal Opportunity Contracting forms including the Work Force Report and Contractors Certification of Pending Actions.

2.5 Living Wage Ordinance Certification of Compliance.

2.6 Reserved.

2.7 Reserved.

2.8 Additional Information as required in Exhibit B.

2.9 Reserved

2.10 Reserved

2.11 Reserved

3. **Bid Review.** Bidders are responsible for carefully examining the ITB, the Scope of Work, this Contract, and all documents incorporated into the Contract by reference before submitting a bid. If selected for award of contract, bidder will be bound by same unless the City has accepted bidder's exceptions, if any, in writing.

4. **Addenda.** The City may issue addenda to this ITB as necessary. All addenda are incorporated into the Contract. The bidder is responsible for determining whether addenda were issued prior to a bid submission. Failure to respond to or properly address addenda may result in rejection of a bid.

5. Quantities. The estimated quantities provided by the City are not guaranteed. These quantities are listed for informational purposes only. Quantities vary depending on the demands of the City. Any variations from the estimated quantities will not entitle the bidder to an adjustment in the unit price or any additional single unit compensation.

6. Quality. Unless otherwise required, all goods furnished must be new and the best of their kind.

6.1 Items Offered. Bidder must state the applicable trade name, brand, catalog, manufacturer, and product number of the required good, if any, in the bid.

6.2 Brand Names. Any reference to a specific brand name in a solicitation is illustrative only and describes a component best meeting the specific operational, design, performance, maintenance, quality, or reliability standards and requirements of the City. Bidder may offer an equivalent or equal in response to a brand name referenced (Proposed Equivalent). The City may consider the Proposed Equivalent after City subjects it to testing and evaluation which must be completed prior to the award of contract. If the bidder offers an item of a manufacturer or vendor other than that specified, the bidder must identify the maker, brand, quality, manufacturer number, product number, catalog number, or other trade designation. The City has complete discretion in determining if a Proposed Equivalent will satisfy its requirements. It is the bidder's responsibility to provide, at their expense, any product information, test data, or other information or documents the City requests to properly evaluate or demonstrate the acceptability of the Proposed Equivalent, including independent testing, evaluation at qualified test facilities, or destructive testing.

7. Modifications, Withdrawals, or Mistakes. Bidder is responsible for verifying all prices and extensions before submitting a bid.

7.1 Modification or Withdrawal of Bid before Closing Date. Prior to the Closing Date, the bidder or bidder's authorized representative may modify or withdraw the bid by providing written notice of the bid modification or withdrawal to the City Contact via the eBidding System. E-mail or telephonic withdrawals or modifications are not permissible.

7.2 Bid Modification or Withdrawal of Bid After Closing Date. Any bidder who seeks to modify or withdraw a bid because of the bidder's inadvertent computational error affecting the bid price must notify the City Contact identified on the eBidding System no later than three working days following the Closing Date. The bidder must provide worksheets and such other information as may be required by the City to substantiate the claim of inadvertent error. Failure to do so may bar relief and allow the City recourse from the bid surety. The burden is upon the bidder to prove the inadvertent error. If, as a result of a bid modification, the bidder is no longer the apparent successful bidder, the City will award to the newly established apparent successful bidder. The City's decision is final.

8. Incurred Expenses. The City is not responsible for any expenses incurred by bidders in participating in this solicitation process.

9. **Public Records.** By submitting a bid, the bidder acknowledges that any information submitted in response to this ITB is a public record subject to disclosure unless the City determines that a specific exemption in the California Public Records Act (CPRA) applies. If the bidder submits information clearly marked confidential or proprietary, the City may protect such information and treat it with confidentiality to the extent permitted by law. However, it will be the responsibility of the bidder to provide to the City the specific legal grounds on which the City can rely in withholding information requested under the CPRA should the City choose to withhold such information. General references to sections of the CPRA will not suffice. Rather, the bidder must provide a specific and detailed legal basis, including applicable case law, that clearly establishes the requested information is exempt from disclosure under the CPRA. If the bidder does not provide a specific and detailed legal basis for requesting the City to withhold bidder's confidential or proprietary information at the time of bid submittal, City will release the information as required by the CPRA and bidder will hold the City, its elected officials, officers, and employees harmless for release of this information. It will be the bidder's obligation to defend, at bidder's expense, any legal actions or challenges seeking to obtain from the City any information requested under the CPRA withheld by the City at the bidder's request. Furthermore, the bidder must indemnify and hold harmless the City, its elected officials, officers, and employees from and against any claim or liability, and defend any action brought against the City, resulting from the City's refusal to release information requested under the CPRA which was withheld at bidder's request. Nothing in the Contract resulting from this bid creates any obligation on the part of the City to notify the bidder or obtain the bidder's approval or consent before releasing information subject to disclosure under the CPRA.

10. **Right to Audit.** The City Auditor may access bidder's records as described in San Diego Charter section 39.2 to confirm contract compliance.

B. PRICING

1. **Fixed Price.** All prices shall be firm, fixed, fully burdened, FOB destination, and include any applicable delivery or freight charges, and any other costs required to provide the requirements as specified in this ITB.

2. **Taxes and Fees.** Taxes and applicable local, state, and federal regulatory fees should not be included in the price proposal. Applicable taxes and regulatory fees will be added to the net amount invoiced. The City is liable for state, city, and county sales taxes but is exempt from Federal Excise Tax and will furnish exemption certificates upon request. All or any portion of the City sales tax returned to the City will be considered in the evaluation of bids.

3. **Escalation.** An escalation factor is not allowed unless called for in this ITB. If escalation is allowed, bidder must notify the City in writing in the event of a decline in market price(s) below the bid price. At that time, the City will make an adjustment in the Contract or may elect to re-solicit.

4. **Unit Price.** Unless the bidder clearly indicates that the price is based on consideration of being awarded the entire lot and that an adjustment to the price was made based on receiving the entire bid, any difference between the unit price correctly extended and the total price shown for all items must be resolved in favor of the unit price.

C. **BID OPENING.** All bids will be opened at, or immediately after, the time noticed for the bid opening in a location that is open to the public. No bidder or interested person will be excluded from the bid opening. Where no member of the public is in attendance, at least one City officer or employee, in addition to the City employee opening the bids, will be present. Bid results will be announced in the presence of those attending. The name of the project will be audibly announced to those present followed by the name of the bidder, the name of the surety, the amount of the bond, if required, and the total amounts or unit amounts bid. Any person present will have the right to ask the announcements be repeated or to ask that omitted data be supplied. Such requests will be honored to the extent they do not unreasonably delay or interfere with the bid opening procedure, as determined at the sole discretion of the City employee opening the bids.

D. EVALUATION OF BIDS

1. **Low Bid Award.** A contract will be awarded to the lowest-price responsible and responsive bidder(s).

2. **Additional Information.** The City may require bidder(s) to provide additional written or oral information to clarify responses.

3. **Sustainable Materials.** Consistent with Council Policy 100-14, the City encourages use of readily recyclable submittal materials that contain post-consumer recycled content.

4. **Waiver of Defects and Technicalities.** The City may waive defects and technicalities in bids when to do so is in the City's best interests.

5. **Rejection of All Bids.** The City may reject any and all bids when to do so is in the City's best interests.

E. ANNOUNCEMENT OF AWARD

1. **Award of Contract.** The City will inform all bidders of its intent to award a Contract in writing.

2. **Obtaining Bid Results.** Bid results may be obtained by: (1) attending the bid opening; (2) e-mailing a request to the City Contact identified on the eBidding System; or (3) visiting the P&C eBidding System to review the bid results. To ensure an accurate response, requests should reference the Solicitation Number. Bid results will not be released over the phone.

3. Multiple Awards. This bid shall be evaluated and awarded by line item or by lot, as may be in the best interest of the City to the lowest responsible bidder(s) whose bid meets all the requirements of this ITB. The City prefers to award to a single contractor but reserves the right to award contracts to multiple Contractors. As further described in Exhibit B, bidder must bid on all items contained in each line item; however, bidders are not required to bid on all line items.

F. PROTESTS. The City's protest procedures are codified in Chapter 2, Article 2, Division 30 of the San Diego Municipal Code (SDMC). These procedures provide unsuccessful bidders with the opportunity to challenge the City's determination on legal and factual grounds. The City will not consider or otherwise act upon an untimely protest.

G. SUBMITTALS REQUIRED UPON NOTICE OF INTENT TO AWARD. The successful bidder is required to submit the following documents to P&C within ten business days from the date on the Notice of Intent to Award letter:

1. Insurance Documents. Evidence of all required insurance, including all required endorsements, as specified in Article VII of the General Contract Terms and Provisions.

2. Taxpayer Identification Number. Internal Revenue Service (IRS) regulations require the City to have the correct name, address, and Taxpayer Identification Number (TIN) or Social Security Number (SSN) on file for businesses or persons who provide goods or services to the City. This information is necessary to complete Form 1099 at the end of each tax year. To comply with IRS regulations, the City requires each Contractor to provide a Form W-9 prior to the award of a Contract.

3. Business Tax Certificate. All businesses that contract with the City must have a current business tax certificate unless the City Treasurer determines the business is exempt.

4. Reserved.

5. Reserved.

The City may find bidder(s) to be non-responsive and award the Contract to the next responsible and responsive low bidder if the apparent successful bidder(s) fails to timely provide the required information or documents.

**EXHIBIT B
SCOPE OF WORK**

A. BID SPECIFICATIONS

The City of San Diego is seeking qualified Contractor(s) to furnish the City of San Diego Public Library (SDPL) with new adult and juvenile library books, as well as audio visual materials, and music scores, in accordance with the specifications outlined in this bid. Additionally, other City departments may purchase material from this Contract as needed.

B. GENERAL BID REQUIREMENTS

The following specifications are required of all Contractors.

1. Service.

- a) The Contractor must provide a dedicated Account Representative and Customer Service Representative. All contractors' Account Representative must respond to messages within two (2) business days.
- b) The Contractor must provide account management services that will include the following information:
 - 1) Account activity by period, account, and purchase order;
 - 2) Open items;
 - 3) Open invoices;
 - 4) Open credit memos;
 - 5) Purchase order status; and
 - 6) Shipment status, including recently shipped orders.

2. Shipping and Receiving.

- a) Individual boxes must weigh no more than fifty (50) pounds. A pallet size must not exceed twenty-five (25) boxes. Multiple pallets are acceptable.
- b) All boxes must clearly display an address label with SDPL's purchase order number and the total number of boxes in the shipment showing the number of each box within that shipment, e.g., Box 1 of 6, Box 2 of 6, etc.
- c) Packing slips must accompany each shipment and be placed in either the first or last box. This box must be clearly marked: "Packing Slip Included." Packing slips must be sorted alphabetically by title and must include the following information:
 - 1) Date sent;
 - 2) Library account number;
 - 3) Library purchase order number;

- 4) Contractor tracking number;
- 5) Author/Title/Publisher of item ordered;
- 6) Quantity ordered;
- 7) Quantity shipped;
- 8) Unit list price;
- 9) Percentage discount from list price;
- 10) Unit price after discount; and
- 11) ISBN (International Standard Book Number).

d) A sample of a packing slip must be submitted with the bid.

3. Returns.

- a) If materials received were not those ordered or are in imperfect condition due to manufacturing defects or shipping damage, such materials, including processed items, must be returned for replacement or credit at no charge to SDPL.
- b) For all materials, returns must be allowed up to six (6) months from invoice date.
- c) Contractor must pay all transportation charges of such returns.

4. Cancellations.

- a) Contractor must provide SDPL with a cancellation report of all items cancelled. This will be done within ten (10) working days of being notified by the publisher. The cancellation report must include the City's purchase order number, quantity ordered, price, author, title, publisher, and reason for cancellation.
- b) Any orders not received after four (4) months will be automatically cancelled. Cancellation of orders whose term has expired must be reported to SDPL. This time period is subject to review and change at the discretion of the City.
- c) The City must be able to cancel individual line items after a purchase order is released if the Contractor has not yet filled the order for the item. This will be done at no charge or penalty to the City.
- d) If an entire purchase order is open and no line items have been filled, the City may cancel the purchase order in its entirety and is not required to cancel each title individually. This will be done at no charge or penalty to the City.

5. Invoices.

- a) Invoices must include the same information as the packing slip. Additionally, invoices must itemize processing charges and tax. Invoices must include page total and invoice total.

- b) Contractor must not invoice back ordered items. All invoiced items must be received prior to issuance of invoice.
- c) Contractor must allow self-credit memos. This allows the City to submit credit memos for erroneous processing charges and materials that are defective or short-shipped.
- d) A sample of an invoice must be submitted with the bid.

6. Pricing.

- a) The specific product item numbers required and estimated quantities of each are listed in Exhibit B, Section H, "Pricing Schedule." The Pricing Schedule is the only form and format that will be accepted for bid pricing and must be completed in its entirety. Failure to provide pricing utilizing the Pricing Schedule shall result in rejection of the bid.
 - 1) Any/all required fees must be included within the pricing bid. The City will not accept any additional costs or fees not reflected in the line item bid prices.

C. SPECIFICATIONS FOR NON-MUSIC SCORE CONTRACTORS

In addition to the specifications in Exhibit B, Section B, "General Bid Requirements," 1(a), the following specifications are required of any Contractor bidding on materials other than music scores.

1. Service.

- a) A Credit Representative must be assigned specifically to this contract. The Credit Representative must respond to messages within two (2) business days.
- b) Contractor must provide a toll-free telephone number for SDPL to contact technical support staff who can answer questions related to their online database of stock data and selection lists during normal business hours, Pacific Time.
- c) Contractor must have a real-time, web-based database of its inventory and warehouse availability that includes the following:
 - (1) Ability to create selection lists that can be used as electronic orders; and
 - (2) Unlimited number of individual user accounts for staff at any and all SDPL facilities.
- d) Contractor must have electronic compatibility with SDPL's current ILS vendor, Polaris, using EDI. Contractor must stay compatible with Polaris' product and service updates.

2. Selection List.

Contractor must provide a website that provides SDPL with bibliographic information, stock information, full text literary reviews from professional magazines (such as Publisher's Weekly, Library Journal, School Library Journal, and Booklist). The website must provide SDPL with the ability to create multi-user "shopping carts" or similar "collections" which serve as a way for the Library to select titles and save those titles in lists on the Contractor's website. The website must also provide SDPL with the ability to batch import such orders with brief MARC (Machine Readable Cataloging) records into the SDPL's Integrated Library System (ILS).

3. Warehousing.

Contractor must have full capacity warehouses. SDPL must have the capability of ordering and receiving from any warehouse without any additional cost being assessed.

4. Fulfillment and Delivery.

- a) Contractor must provide confirmation and status of items ordered within twenty-four (24) hours of placement of order.
- b) Initial shipments of processed materials must be made within two (2) weeks.
- c) Contractor must notify SDPL within one (1) week after receipt of order if Contractor is unable to supply the ordered materials.
- d) If Contractor experiences a delay in fulfilling order, Contractor must notify SDPL to inform the reason for the delay and give a projected date of delivery.
- e) Contractor must give monthly status updates on open orders.
- f) Partial shipments of individual titles are not acceptable unless the balance of the order can be received within thirty (30) business days.
- g) Priority, rush pre-processed (if specified) materials must be mailed or shipped so that materials arrive at SDPL within five (5) business days of Contractor's receipt of order.
- h) SDPL orders must receive the same priority as bookstore orders. Shipments of best sellers must arrive at SDPL on or prior to the street release date.
- i) Contractor must have the ability to provide up to 500 copies of individual titles of best sellers.
- j) Contractor must provide no-charge replacements as directed by SDPL.
- k) Continuations (Standing Orders) are to be shipped within three (3) weeks of publication. Unless otherwise indicated on an order, the latest edition published is to be supplied. Substitutions or additions of titles or editions will not be permitted unless approved by SDPL. Contractor must accept

continuations on a "until forbid" basis. SDPL reserves the right to cancel serial titles at any time. Contractor is responsible for shipments made of cancelled items. Contractor must notify SDPL of:

- 1) Ceased publications;
- 2) Suspended publications;
- 3) Publication delays; and
- 4) Price changes.

- 1) The City may procure material from another contractor if Contractor does not stock requested materials.

5. Training.

Within thirty (30) business days from award of contract, Contractor must supply training to employees in the SDPL's Technical Services Section at no additional cost to the City. Contractor must provide all necessary training materials at no additional cost to the City.

Training will include, but not be limited to: access; title searching; data entry; list creation; transmitting of orders; invoice management; report generation; and troubleshooting.

Training will be provided when the Contractor's system is updated and when any procedures change, at no additional cost to the City.

6. Large Print Books.

Large print materials must meet National Association for the Visually Handicapped (NAVH) standards.

7. Processing Services.

SDPL will procure library materials with no processing services required or with full physical processing. Contractor must furnish all supplies and packaging except for library bar codes, RFID tags and overlays, genre labels, and library property stamps.

Below are processing and classification specifications. Processing requirements for each "Type of Material" are listed on the Pricing Schedule.

a) Books

- 1) Tape 1.5 mil mylar jacket to all books with dust covers.
- 2) Apply 15 mil Kapco cover with 2 mil spine protector to trade paperbacks.
- 3) Place spine label 2 inches from the bottom edge of the spine.
- 4) Place label protector on spine labels not covered by a mylar jacket.
- 5) Apply a library-supplied RFID book tag to the inside of the back cover. The RFID book tag must be programmed by Contractor.

- 6) A barcode is to be applied to the back of the book, 1.5 inches from the spine and 1 inch from the bottom of the book.
- 7) A human readable barcode is to be applied to the title page, 2 inches from the bottom of the page, centered.
- 8) Apply a genre label to adult mysteries, science fiction, and westerns.
- 9) Stamp the top edge of the book with a single line property stamp.

b) Music CDs

- 1) If CD is in a jewel case, the item must be repackaged into a plastic case.
- 2) Place spine label on the front of the CD case in the top left corner, about 1/4 inch to the right to avoid the hinge. Cover with a label protector.
- 3) Apply a RFID StingRay overlay to the disc. If there are multiple discs, apply to the first disc only. The RFID overlay must be programmed by Contractor.
- 4) Apply a donut label that includes SDPL's name and at least the 9 last digits of the barcode to the center of the first disc.
- 5) Barcode is to be applied to the back of the case, 1 inch from the bottom of the case, centered.
- 6) A contents label is to be applied underneath or below the barcode on the back of the case.
- 7) A human readable barcode must be applied to the back of the insert, at the bottom, centered.

c) DVDs

- 1) Use a black plastic case with full outer sleeve if repackaging is necessary. Original art must be cut and placed inside the sleeve; however, color reproduction of original art can be substituted.
- 2) Place spine label directly onto the art so that it is flush with the bottom of the case's spine when art is placed into the sleeve.
- 3) Apply a RFID StingRay overlay to the disc. If there are multiple discs, apply to the first disc only. If processing a Blu-ray/DVD combo pack, the StingRay is only applied to the DVD. The RFID overlay must be programmed by Contractor.
- 4) DVD sets are to be processed as a single item.
- 5) Apply a donut label that includes SDPL's name and at least the 9 last digits of the barcode to the center of the first disc. If a Blu-ray/DVD combo pack, then the label is applied to the DVD.
- 6) Barcode is to be applied to the back of the case, 1.5 inches from the spine and 1 inch from the bottom of the case.
- 7) A contents label is to be applied underneath or below the barcode on the back of the case.
- 8) A human readable barcode must be applied inside the case, below the disc. If there isn't space below the disc, lift the disc, and place barcode in the space underneath the disc.

d) Spoken Word Audio CDs

- 1) Use a white plastic compact disc album with two rings and full clear outer sleeve sealed at the bottom if repackaging is necessary. Original art must be cut and placed inside the sleeve; however, color reproduction of original art can be substituted.
- 2) Place spine labels 1 inch from the bottom of the spine. Cover with a label protector.
- 3) Apply a RFID StingRay overlay to the disc. If there are multiple discs, apply to the first disc only. The RFID overlay must be programmed by Contractor.
- 4) Apply a donut label that includes SDPL's name and at least the 9 last digits of the barcode to the center of the first disc.
- 5) A barcode is to be applied to the back of the case, 1.5 inches from the spine and 1 inch from the bottom of the case.
- 6) A contents label is to be applied underneath or below the barcode on the back of the case.
- 7) A human readable barcode must be applied inside the case, close to the bottom of the case, centered.

e) Classification Scheme

- (1) Non-fiction call numbers, with the exception of single biographies, will be assigned using Unabridged Dewey Classification. The call number must never go beyond five numbers past the decimal point.
- (2) All call numbers, with the exception of single biographies, must be cuttered with the author's surname or the first word of the main entry.
- (3) All letters in call numbers must be capitalized.
- (4) Juvenile non-fiction call numbers must have a prefix of J.
- (5) Young Adult non-fiction call numbers must have a prefix of YA.
- (6) Adult fiction must be given a call number of FIC and cuttered with the author's surname or the first word of the main entry.
- (7) Adult mysteries must have a call number prefix of MYST.
- (8) Adult science fiction must have a call number prefix of SCI-FI.
- (9) Adult westerns must have a call number prefix of WEST.
- (10) Graphic novels must have a call number prefix of GN, GN J, or GN Y.
- (11) Short stories by a single author must be treated like fiction. Short stories by multiple authors must be given a Dewey number.
- (12) Juvenile fiction must be given a call number of J FIC and cuttered with the author's surname or the first word of the main entry.
- (13) Juvenile easy fiction and board books must be given the call number E and cuttered with the author's surname or the first word of the main entry.
- (14) Young Adult fiction must be given a call number of YA FIC and cuttered with the author's surname or the first word of the main entry.
- (15) Biographies of a single person must have a call number of B and cuttered with the subject's surname and the author's surname.

- (16) Collective biographies must be given a Dewey number and cuttered with the author's surname or first word of the main entry.
- (17) Large print books must have a call number prefix of LP.
- (18) For adult music and spoken word compact discs the call number must have a prefix of CD.
- (19) For juvenile music and spoken word compact discs the call number must have a prefix of J CD.
- (20) For young adult music and spoken word compact discs the call number must have a prefix of YA CD.
- (21) For adult spoken word on MP3 compact discs the call number must have a prefix of MP3.
- (22) For juvenile spoken word on MP3 compact discs the call number must have a prefix of J MP3.
- (23) For young adult spoken word on MP3 compact discs the call number must have a prefix of YA MP3.
- (24) For adult DVDs the call number must have a prefix of DVD.
- (25) For juvenile DVDs the call number must have a prefix of J DVD.
- (26) For young adult DVDs the call number must have a prefix of YA DVD.

f. Label Samples

Adult Fiction	FIC SMITH
Juvenile Fiction	J FIC SMITH
Easy Readers, Picture Books, Board Books	E SMITH
Young Adult Fiction	YA FIC SMITH
Adult Mystery	MYST FIC SMITH
Large Print	LP FIC SMITH

Spanish Adult Fiction	SPA FIC SMITH
Spanish Juvenile Fiction	J SPA FIC SMITH
Young Adult Graphic Novel	GN YA FIC SMITH
Single Biography	B <u>CLINTON</u> BERNSTEIN
Single Juvenile Biography	J B <u>CLINTON</u> BERNSTEIN
Music CD	CD 782.42164 SPEARS
Young Adult Music CD	YA CD 782.42164 SPEARS
Juvenile Spoken Word on MP3 CD	J MP3 FIC SMITH
Adult DVD	DVD 791.4572

	SIMPSONS
Juvenile DVD	J 791.4572 DVD SIMPSONS

8. Standing Orders and Automatic Purchase Plans.

a) Standing Order Plans

- 1) Exhibit B, H, "Pricing Schedule," specify which "Type of Material" is required to have a Standing Order plan.
- 2) Contractor must have the ability to provide serially issued publications as a standing order service.
- 3) Contractor must be able to furnish titles in various subscription cycles that are specified by SDPL
- 4) Contractor must provide access to an online database of titles available as standing orders that SDPL can use to order new titles, modify quantities of titles on order, cancel titles, or claim issues that SDPL has not received, at no additional cost to the City.
- 5) Categories must include but are not limited to:
 - Reference Books
 - Directories
 - Travel Books
 - Test Books and Guides
 - Large Print Books
 - Consumer Buying Guides
- 6) Contractor must submit with their bid samples of reports provided for any special category standing order plans offered.
- 7) SDPL reserves the right to employ unique standing order plans available from other vendors.
- 8) Standing Order Plans must be provided at no additional cost to the City.

b) Automatic Purchase Plans

- 1) Exhibit B, H, "Pricing Schedule," specify which "Type of Material" is required to have an Automatic Purchase Plan.
- 2) Contractor must have the ability to provide automatic purchase plans based on reviews for new fiction and non-fiction materials (adult, young adult, and children's book and non-book materials). Some examples of automatic plans are: Best Sellers, Oprah Book Club, and Juvenile Easy Reader Books (a.k.a. "Early Chapter Books").

They may also include Automatic Purchase plans for:

- Children's and Adult's DVD releases
 - Children's and Adult's Audio Book releases
 - Children's and Adult's Music CD releases
 - Large Print releases selected by review or genre
- 3) Requested services for these types of plans include, but are not limited to the following:
 - Access to Contractor's Order History database, at no additional cost to the City. This will assist SDPL in determining if they have already placed an order for the titles selected.
 - Electronic transmission of Selection Report to SDPL.
 - Adjustment to orders as requested by SDPL.
 - Shipment of titles ordered to SDPL.
 - 4) Contractor must submit with their bid sample reports for any of the automatic purchase plans offered at no additional cost to the City.
 - 5) SDPL reserves the right to employ unique automatic purchase plans available from other vendors. Automatic Purchase Plans must be provided at no additional cost to the City.

D. SPECIFICATIONS FOR MUSIC SCORE CONTRACTORS

Music scores may be awarded separately from awards to provide books, compact discs, and other types of materials. In addition to the specifications in Exhibit B, Section B, "General Bid Requirements," 1(a), the following specifications are required of Music Scores Contractors.

1. Contractor must provide confirmation and status of items ordered within twenty-four (24) hours of placement of order.
2. Contractor must provide a wide variety of types of music scores, including, but not limited to full scores, miniature scores, scores with parts, vocal scores, conductor's scores, and close scores.

3. Contractor must provide music scores published in countries other than the United States and in languages other than English, such as, but not limited to, those published in the United Kingdom, Austria, Germany, France, Spain, and Italy. Languages must include, but not be limited to, German, French, Spanish, and Italian.
4. Contractor must provide access to a website with ordering functions; basic bibliographic information; information about item availability; and the capability to easily display works according to musical style, genre, and medium of performance, at no additional cost to the City.
6. Contractor must provide musically knowledgeable staff members who are familiar with musical terms and composer names, and are able to properly select and order scores in different formats.
7. Contractor must provide subscriptions and standing orders for music scores, such as for the complete works of a composer.
8. Contractor must provide new publication alerts for music scores.
9. Contractor must provide individual replacement parts when they are available from the publisher (e.g. providing a replacement of the viola part of a string quartet).

E. REFERENCES/QUALIFICATIONS

In order to be considered responsive to this ITB, Contractor is required to demonstrate successful performance of work similar in size and scope as specified in this ITB as follows:

Provide three references from library customers currently under contract that serve at least 500,000 customers in at least ten branches. Contractor cannot use City of San Diego as a reference.

F. ADDITIONAL CONTRACTORS

SDPL maintains subscriptions with several contractors that provide databases, e-books, and other electronic resources. SDPL reserves the right to purchase print versions of these resources directly from these contractors when it is determined to be in the best interest of the City. SDPL reserves the right to "piggyback" or buy off of other agency contracts or "cooperative" contracts as may be in the best interest of the City.

G. DEPARTMENT REPRESENTATIVE.

The Department Representative for this Contract is identified in the notice of award and is responsible for overseeing and monitoring this Contract.

Robyn Gage-Norquist
330 Park Blvd.
San Diego, CA 92101
rgage@sandiego.gov
619-236-5803

PRICING SCHEDULE

H. Pricing.

This bid shall be evaluated and awarded by line item or by lot, as may be in the best interest of the City to the lowest responsible bidder(s) whose bid meets all the requirements of this ITB. The City prefers to award to a single contractor but reserves the right to award contracts to multiple Contractors. For each line item, bidder must complete each line item in its entirety; however, bidder is not required to bid on all line items. The City reserves the right in its sole discretion to increase or decrease the quantities of any item. Only Section 1.1, "Materials Pricing," of the Pricing Schedule will be used as a basis of award, however, Section 1.1, Materials Pricing and Section 1.2 Processing Services, must be filled out in its entirety for each line item that a bid is provided.

The Pricing Schedule is the only form and format that will be accepted for bid pricing. Failure to provide pricing utilizing the Pricing Schedule shall result in rejection of the bid. Any/all required fees must be included within the bid price. The City will not accept any additional costs or fees not reflected in the line item bid prices.

1.1 Materials Pricing.

The pricing for this section is for material only and does not include Processing Services. Processing Services are priced separately in Section 1.2 below and includes all "Type of Material" in this section except for Music Scores. For the purpose of evaluation, an example of an item's publisher price is included so that the bidder's discounts can be converted into prices for comparison.

Please see Attachment 2 for additional information on the proposed discount schedule. Please see Attachment 3 for Material Category Definitions.

Item No.	Type of Material	Standing Order Required Yes/No	Automatic Purchase Plan Required Yes/No	Example Publisher's List Price	Percent Discount Off of Publisher's List Price (Specific %)	Final Price Without Processing
1.	Adult Hardcover Trade Hardcover Books, i.e., books intended for a general readership	No	Yes	\$30.00	47.1 % <i>Category 1, Att. 3</i>	\$ 15.87

Please see Attachment 2 for additional information on the proposed discount schedule. Please see Attachment 3 for Material Category Definitions.

Item No.	Type of Material	Standing Order Required Yes/No	Automatic Purchase Plan Required Yes/No	Example Publisher's List Price	Percent Discount Off of Publisher's List Price (Specific %)	Final Price Without Processing
2.	Adult Paperback Trade Paperback Books, i.e., books intended for a general readership	Yes	Yes	\$16.99	41.0 % <i>Category III, Attachment 3</i>	\$ 10.02
3.	Technical & Textbooks (books on scientific study and research textbooks on any subject)	Yes	No	\$85.00	10.0 % <i>Category IX, Attachment 3 *</i>	\$ 76.50
4.	Large Print Books	No	Yes	\$38.99	47.1 % <i>Category I, Attachment 3 **</i>	\$ 20.63
5.	Adult Mass Market Paperbacks	No	Yes	\$9.99	40.0 % <i>Category V, Att. 3</i>	\$ 5.99
6.	Juvenile & Young Adult Trade Hardcover Books	No	Yes	\$19.99	46.1 % <i>Category II, Att. 3</i>	\$ 10.77
7.	Juvenile & Young Adult Trade Paperback Books	No	Yes	\$11.99	41.0 % <i>Category IV, Att. 3</i>	\$ 7.07
8.	Board Books	No	No	\$8.99	41.0 % <i>Category XIII, Att. 3</i>	\$ 5.30

* Titles which receive minimal publisher discount are available and will be invoiced at publisher list price. These titles may be blocked from order upon request.

** This discount will apply to popular hardcover trade editions issued by widely distributed publishers. Other Large Print editions will be discounted as outlined in Attachment 2, Categories III, VIII, IX, and XI.

Please see Attachment 2 for additional information on the proposed discount schedule. Please see Attachment 3 for Material Category Definitions.

Item No.	Type of Material	Standing Order Required Yes/No	Automatic Purchase Plan Required Yes/No	Example Publisher's List Price	Percent Discount Off of Publisher's List Price (Specific %)	Final Price Without Processing
9.	Juvenile and Young Adult Publisher's Library Bindings	No	Yes	\$32.65	25.0 % <i>Category VII, Att. 3</i>	\$ 24.49
10.	Juvenile and Young Adult Mass Market Paperbacks	No	Yes	4.99	40.0 % <i>Category V, Att. 3</i>	\$ 2.99
11.	Music Compact Discs	No	Yes	\$13.98	25.0 %	\$ 10.49
12.	DVDs	No	Yes	\$30.99	32.1 %	\$ 21.04
13.	Spoken Word Audio Compact Discs (Unabridged)	No	Yes	\$50.00	45.0 % <i>Category XII, Att. 3</i> ***	\$ 27.50
14.	Music Scores	No	No	\$60.00	No Bid %	\$ No Bid

*** Represents recent release, popular editions issued by widely distributed publishers. Not all spoken word CD editions meet these criteria. Other editions will be discounted as outlined in categories I, VII, VIII, IX, X, or XI.

1.2. Processing Services as specified in Exhibit B, Section C, 7, "Processing Services."

This section is for processing only and does not include pricing for the materials included in Section 1.1, "Materials Pricing," above.

In addition, it is desirable for bidder to submit a list showing the pricing for each individual processing component to be in effect during the initial term of the bid and subject to price increases in accordance with Article III, "Compensation," of the City of San Diego General Contract Terms and Provision, in Exhibit C; this section (1.2) will not be included in the evaluation for award to determine the lowest bid; but must be completed in alignment with Section 1.1, "Materials Pricing," in order to be considered to be responsive.

Please see Attachment 2.3 for component pricing and additional information on cataloging/processing services.

Item No.	Type of Material	Processing As Required in This Column and Specified in Exhibit B, Section C, 7, "Processing Services"	Price for Processing of A Single Item
1.	Adult Hardcover Trade Hardcover Books, i.e., books intended for a general readership	<ul style="list-style-type: none"> • RFID Tag • Spine Label • Mylar Jacket • Genre Label • Barcodes • Property Stamping 	\$ 2.73
2.	Adult Paperback Trade Paperback Books, i.e., books intended for a general readership	<ul style="list-style-type: none"> • RFID Tag • Spine Label • Spine Label Protector • Kapco Cover • Barcodes • Property Stamping 	\$ 3.68
3.	Small Press Books (small publishers not listed in Publishers Trade Annual)	<ul style="list-style-type: none"> • RFID Tag • Spine Label • Spine Label Protector • Barcodes • Property Stamping 	\$ 1.59
4.	Technical & Textbooks (books on scientific study and research textbooks on any subject)	<ul style="list-style-type: none"> • RFID Tag • Spine Label • Spine Label Protector • Barcodes • Property Stamping 	\$ 1.59

Please see Attachment 2.3 for component pricing and additional information on cataloging/processing services.

Item No.	Type of Material	Processing As Required In This Column and Specified in Exhibit B, Section G, 7, "Processing Services."	Price for Processing of A Single Item
5.	Large Print Books	<ul style="list-style-type: none"> • RFID Tag • Spine Label • Spine Label Protector • Barcodes • Property Stamping 	\$ 1.59
6.	Adult Mass Market Paperbacks	<ul style="list-style-type: none"> • Barcodes • Property Stamping 	\$ 0.55
7.	Juvenile & Young Adult Trade Hardcover Books	<ul style="list-style-type: none"> • RFID Tag • Spine Label • Mylar Jacket • Barcodes • Property Stamping 	\$ 2.18
8.	Juvenile & Young Adult Trade Paperback Books	<ul style="list-style-type: none"> • RFID Tag • Spine Label • Spine Label Protector • Kapco Cover • Barcodes • Property Stamping 	\$ 3.68
9.	Board Books	<ul style="list-style-type: none"> • Spine Label • Spine Label Protector • Barcodes • Property Stamping 	\$ 0.80
10.	Juvenile and Young Adult Publisher's Library Bindings	<ul style="list-style-type: none"> • RFID Tag • Spine Label • Spine Label Protector • Barcodes • Property Stamping 	\$ 1.59

Please see Attachment 2.3 for component pricing and additional information on cataloging/processing services.

Item No.	Type of Material	Processing As Required in This Column and Specified in Exhibit B, Section C, "Processing Services."	Price for Processing of A Single Item
11.	Juvenile and Young Adult Mass Market Paperbacks	<ul style="list-style-type: none"> • Barcodes • Property Stamping 	\$ 0.55
12.	Music Compact Discs	<ul style="list-style-type: none"> • RFID StingRay • Spine Label • Spine Label Protector • Plastic Case • Barcodes • Contents Label • Donut Label 	\$ 4.04
13.	DVDs	<ul style="list-style-type: none"> • RFID StingRay • Spine Label • DVD Case • Barcodes • Contents Label • Donut Label 	\$ 4.04
14.	Spoken Word Audio Compact Discs (Unabridged)	<ul style="list-style-type: none"> • RFID StingRay • Spine Label • Spine Label Protector • CD Album • Barcodes • Contents Label • Donut Label 	\$ 7.33

EXHIBIT C



THE CITY OF SAN DIEGO
GENERAL CONTRACT TERMS AND PROVISIONS
APPLICABLE TO GOODS, SERVICES, AND CONSULTANT CONTRACTS

ARTICLE I
SCOPE AND TERM OF CONTRACT

1.1 Scope of Contract. The scope of contract between the City and a provider of goods and/or services (Contractor) is described in the Contract Documents. The Contract Documents are comprised of the Request for Proposal, Invitation to Bid, or other solicitation document (Solicitation); the successful bid or proposal; the letter awarding the contract to Contractor; the City's written acceptance of exceptions or clarifications to the Solicitation, if any; and these General Contract Terms and Provisions.

1.2 Effective Date. A contract between the City and Contractor (Contract) is effective on the last date that the contract is signed by the parties and approved by the City Attorney in accordance with Charter section 40. Unless otherwise terminated, this Contract is effective until it is completed or as otherwise agreed upon in writing by the parties, whichever is the earliest. A Contract term cannot exceed five (5) years unless approved by the City Council by ordinance.

1.3 Contract Extension. The City may, in its sole discretion, unilaterally exercise an option to extend the Contract as described in the Contract Documents. In addition, the City may, in its sole discretion, unilaterally extend the Contract on a month-to-month basis following contract expiration if authorized under Charter section 99 and the Contract Documents. Contractor shall not increase its pricing in excess of the percentage increase described in the Contract.

ARTICLE II
CONTRACT ADMINISTRATOR

2.1 Contract Administrator. The Purchasing Agent or designee is the Contract Administrator for purposes of this Contract, and has the responsibilities described in this Contract, in the San Diego Charter, and in Chapter 2, Article 2, Divisions 5, 30, and 32.

2.1.1 Contractor Performance Evaluations. The Contract Administrator will evaluate Contractor's performance as often as the Contract Administrator deems necessary throughout the term of the contract. This evaluation will be based on criteria including the quality of goods or services, the timeliness of performance, and adherence to applicable laws, including prevailing wage and living wage. City will provide Contractors who receive an unsatisfactory rating with a copy of the evaluation and an opportunity to respond. City may consider final evaluations, including Contractor's response, in evaluating future proposals and bids for contract award.

2.2 Notices. Unless otherwise specified, in all cases where written notice is required under this Contract, service shall be deemed sufficient if the notice is personally delivered or deposited in the United States mail, with first class postage paid, attention to the Purchasing Agent. Proper notice is effective on the date of personal delivery or five (5) days after deposit in a United States postal mailbox unless provided otherwise in the Contract. Notices to the City shall be sent to:

Purchasing Agent
City of San Diego, Purchasing and Contracting Division
1200 3rd Avenue, Suite 200
San Diego, CA 92101-4195

ARTICLE III COMPENSATION

3.1 Manner of Payment. Contractor will be paid monthly, in arrears, for goods and/or services provided in accordance with the terms and provisions specified in the Contract.

3.2 Invoices.

3.2.1 Invoice Detail. Contractor's invoice must be on Contractor's stationary with Contractor's name, address, and remittance address if different. Contractor's invoice must have a date, an invoice number, a purchase order number, a description of the goods or services provided, and an amount due.

3.2.2 Service Contracts. Contractor must submit invoices for services to City by the 10th of the month following the month in which Contractor provided services. Invoices must include the address of the location where services were performed and the dates in which services were provided.

3.2.3 Goods Contracts. Contractor must submit invoices for goods to City within seven days of the shipment. Invoices must describe the goods provided.

3.2.4 Parts Contracts. Contractor must submit invoices for parts to City within seven calendar (7) days of the date the parts are shipped. Invoices must include the manufacturer of the part, manufacturer's published list price, percentage discount applied in accordance with Pricing Page(s), the net price to City, and an item description, quantity, and extension.

3.2.5 Extraordinary Work. City will not pay Contractor for extraordinary work unless Contractor receives prior written authorization from the Contract Administrator. Failure to do so will result in payment being withheld for services. If approved, Contractor will include an invoice that describes the work performed and the location where the work was performed, and a copy of the Contract Administrator's written authorization.

3.2.6 Reporting Requirements. Contractor must submit the following reports using the City's web-based contract compliance portal. Incomplete and/or delinquent reports may cause payment delays, non-payment of invoice, or both. For questions, please view the City's online tutorials on how to utilize the City's web-based contract compliance portal.

3.2.6.1 Monthly Employment Utilization Reports. Contractor and Contractor's subcontractors and suppliers must submit Monthly Employment Utilization Reports by the fifth (5th) day of the subsequent month.

3.2.6.2 Monthly Invoicing and Payments. Contractor and Contractor's subcontractors and suppliers must submit Monthly Invoicing and Payment Reports by the fifth (5th) day of the subsequent month.

3.3 Annual Appropriation of Funds. Contractor acknowledges that the Contract term may extend over multiple City fiscal years, and that work and compensation under this Contract is contingent on the City Council appropriating funding for and authorizing such work and compensation for those fiscal years. This Contract may be terminated at the end of the fiscal year for which sufficient funding is not appropriated and authorized. City is not obligated to pay Contractor for any amounts not duly appropriated and authorized by City Council.

3.4 Price Adjustments. Based on Contractor's written request and justification, the City may approve an increase in unit prices on Contractor's pricing pages consistent with the amount requested in the justification in an amount not to exceed the increase in the Consumer Price Index, San Diego Area, for All Urban Customers (CPI-U) as published by the Bureau of Labor Statistics, or 5.0%, whichever is less, during the preceding one year term. If the CPI-U is a negative number, then the unit prices shall not be adjusted for that option year (the unit prices will not be decreased). A negative CPI-U shall be counted against any subsequent increases in the CPI-U when calculating the unit prices for later option years. Contractor must provide such written request and justification no less than sixty days before the date in which City may exercise the option to renew the contract, or sixty days before the anniversary date of the Contract. Justification in support of the written request must include a description of the basis for the adjustment, the proposed effective date and reasons for said date, and the amount of the adjustment requested with documentation to support the requested change (e.g. CPI-U or 5.0%, whichever is less). City's approval of this request must be in writing.

ARTICLE IV SUSPENSION AND TERMINATION

4.1 City's Right to Suspend for Convenience. City may suspend all or any portion of Contractor's performance under this Contract at its sole option and for its convenience for a reasonable period of time not to exceed six (6) months. City must first give ten (10) days' written notice to Contractor of such suspension. City will pay to Contractor a sum equivalent to the reasonable value of the goods and/or services satisfactorily provided up to the date of suspension. City may rescind the suspension prior to or at six (6) months by providing Contractor with written notice of the rescission, at which time Contractor would be required to resume performance in compliance with the terms and provisions of this Contract. Contractor will be entitled to an extension of time to complete performance under the Contract equal to the length of the suspension unless otherwise agreed to in writing by the Parties.

4.2 City's Right to Terminate for Convenience. City may, at its sole option and for its convenience, terminate all or any portion of this Contract by giving thirty (30) days' written notice of such termination to Contractor. The termination of the Contract shall be effective upon receipt of the notice by Contractor. After termination of all or any portion of the Contract, Contractor shall: (1) immediately discontinue all affected performance (unless the notice directs otherwise); and (2) complete any and all additional work necessary for the orderly filing of

documents and closing of Contractor's affected performance under the Contract. After filing of documents and completion of performance, Contractor shall deliver to City all data, drawings, specifications, reports, estimates, summaries, and such other information and materials created or received by Contractor in performing this Contract, whether completed or in process. By accepting payment for completion, filing, and delivering documents as called for in this section, Contractor discharges City of all of City's payment obligations and liabilities under this Contract with regard to the affected performance.

4.3 City's Right to Terminate for Default. Contractor's failure to satisfactorily perform any obligation required by this Contract constitutes a default. Examples of default include a determination by City that Contractor has: (1) failed to deliver goods and/or perform the services of the required quality or within the time specified; (2) failed to perform any of the obligations of this Contract; and (3) failed to make sufficient progress in performance which may jeopardize full performance.

4.3.1 If Contractor fails to satisfactorily cure a default within ten (10) calendar days of receiving written notice from City specifying the nature of the default, City may immediately cancel and/or terminate this Contract, and terminate each and every right of Contractor, and any person claiming any rights by or through Contractor under this Contract.

4.3.2 If City terminates this Contract, in whole or in part, City may procure, upon such terms and in such manner as the Purchasing Agent may deem appropriate, equivalent goods or services and Contractor shall be liable to City for any excess costs. Contractor shall also continue performance to the extent not terminated.

4.4 Termination for Bankruptcy or Assignment for the Benefit of Creditors. If Contractor files a voluntary petition in bankruptcy, is adjudicated bankrupt, or makes a general assignment for the benefit of creditors, the City may at its option and without further notice to, or demand upon Contractor, terminate this Contract, and terminate each and every right of Contractor, and any person claiming rights by and through Contractor under this Contract.

4.5 Contractor's Right to Payment Following Contract Termination.

4.5.1 Termination for Convenience. If the termination is for the convenience of City an equitable adjustment in the Contract price shall be made. No amount shall be allowed for anticipated profit on unperformed services, and no amount shall be paid for an as needed contract beyond the Contract termination date.

4.5.2 Termination for Default. If, after City gives notice of termination for failure to fulfill Contract obligations to Contractor, it is determined that Contractor had not so failed, the termination shall be deemed to have been effected for the convenience of City. In such event, adjustment in the Contract price shall be made as provided in Section 4.3.2. City's rights and remedies are in addition to any other rights and remedies provided by law or under this Contract.

4.6 Remedies Cumulative. City's remedies are cumulative and are not intended to be exclusive of any other remedies or means of redress to which City may be lawfully entitled in case of any breach or threatened breach of any provision of this Contract.

ARTICLE V ADDITIONAL CONTRACTOR OBLIGATIONS

5.1 Inspection and Acceptance. The City will inspect and accept goods provided under this Contract at the shipment destination unless specified otherwise. Inspection will be made and acceptance will be determined by the City department shown in the shipping address of the Purchase Order or other duly authorized representative of City.

5.2 Responsibility for Lost or Damaged Shipments. Contractor bears the risk of loss or damage to goods prior to the time of their receipt and acceptance by City. City has no obligation to accept damaged shipments and reserves the right to return damaged goods, at Contractor's sole expense, even if the damage was not apparent or discovered until after receipt.

5.3 Responsibility for Damages. Contractor is responsible for all damage that occurs as a result of Contractor's fault or negligence or that of its' employees, agents, or representatives in connection with the performance of this Contract. Contractor shall immediately report any such damage to people and/or property to the Contract Administrator.

5.4 Delivery. Delivery shall be made on the delivery day specified in the Contract Documents. The City, in its sole discretion, may extend the time for delivery. The City may order, in writing, the suspension, delay or interruption of delivery of goods and/or services.

5.5 Delay. Unless otherwise specified herein, time is of the essence for each and every provision of the Contract. Contractor must immediately notify City in writing if there is, or it is anticipated that there will be, a delay in performance. The written notice must explain the cause for the delay and provide a reasonable estimate of the length of the delay. City may terminate this Contract as provided herein if City, in its sole discretion, determines the delay is material.

5.5.1 If a delay in performance is caused by any unforeseen event(s) beyond the control of the parties, City may allow Contractor to a reasonable extension of time to complete performance, but Contractor will not be entitled to damages or additional compensation. Any such extension of time must be approved in writing by City. The following conditions may constitute such a delay: war; changes in law or government regulation; labor disputes; strikes; fires, floods, adverse weather or other similar condition of the elements necessitating cessation of the performance; inability to obtain materials, equipment or labor; or other specific reasons agreed to between City and Contractor. This provision does not apply to a delay caused by Contractor's acts or omissions. Contractor is not entitled to an extension of time to perform if a delay is caused by Contractor's inability to obtain materials, equipment, or labor unless City has received, in a timely manner, documentary proof satisfactory to City of Contractor's inability to obtain materials, equipment, or labor, in which case City's approval must be in writing.

5.6 Restrictions and Regulations Requiring Contract Modification. Contractor shall immediately notify City in writing of any regulations or restrictions that may or will require Contractor to alter the material, quality, workmanship, or performance of the goods and/or services to be provided. City reserves the right to accept any such alteration, including any resulting reasonable price adjustments, or to cancel the Contract at no expense to the City.

5.7 Warranties. All goods and/or services provided under the Contract must be warranted by Contractor or manufacturer for at least twelve (12) months after acceptance by City, except automotive equipment. Automotive equipment must be warranted for a minimum of 12,000 miles or 12 months, whichever occurs first, unless otherwise stated in the Contract. Contractor is responsible to City for all warranty service, parts, and labor. Contractor is required to ensure that warranty work is performed at a facility acceptable to City and that services, parts, and labor are available and provided to meet City's schedules and deadlines. Contractor may establish a warranty service contract with an agency satisfactory to City instead of performing the warranty service itself. If Contractor is not an authorized service center and causes any damage to equipment being serviced, which results in the existing warranty being voided, Contractor will be liable for all costs of repairs to the equipment, or the costs of replacing the equipment with new equipment that meets City's operational needs.

5.8 Industry Standards. Contractor shall provide goods and/or services acceptable to City in strict conformance with the Contract. Contractor shall also provide goods and/or services in accordance with the standards customarily adhered to by an experienced and competent provider of the goods and/or services called for under this Contract using the degree of care and skill ordinarily exercised by reputable providers of such goods and/or services. Where approval by City, the Mayor, or other representative of City is required, it is understood to be general approval only and does not relieve Contractor of responsibility for complying with all applicable laws, codes, policies, regulations, and good business practices.

5.9 Records Retention and Examination. Contractor shall retain, protect, and maintain in an accessible location all records and documents, including paper, electronic, and computer records, relating to this Contract for five (5) years after receipt of final payment by City under this Contract. Contractor shall make all such records and documents available for inspection, copying, or other reproduction, and auditing by authorized representatives of City, including the Purchasing Agent or designee. Contractor shall make available all requested data and records at reasonable locations within City or County of San Diego at any time during normal business hours, and as often as City deems necessary. If records are not made available within the City or County of San Diego, Contractor shall pay City's travel costs to the location where the records are maintained and shall pay for all related travel expenses. Failure to make requested records available for inspection, copying, or other reproduction, or auditing by the date requested may result in termination of the Contract. Contractor must include this provision in all subcontracts made in connection with this Contract.

5.9.1 Contractor shall maintain records of all subcontracts entered into with all firms, all project invoices received from Subcontractors and Suppliers, all purchases of materials and services from Suppliers, and all joint venture participation. Records shall show name, telephone number including area code, and business address of each Subcontractor and Supplier, and joint venture partner, and the total amount actually paid to each firm. Project relevant records, regardless of tier, may be periodically reviewed by the City.

5.10 Quality Assurance Meetings. Upon City's request, Contractor shall schedule one or more quality assurance meetings with City's Contract Administrator to discuss Contractor's performance. If requested, Contractor shall schedule the first quality assurance meeting no later than eight (8) weeks from the date of commencement of work under the Contract. At the quality assurance meeting(s), City's Contract Administrator will provide Contractor with feedback, will note any deficiencies in Contract performance, and provide Contractor with an opportunity to address and correct such deficiencies. The total number of quality assurance meetings that may be required by City will depend upon Contractor's performance.

5.11 Duty to Cooperate with Auditor. The City Auditor may, in his sole discretion, at no cost to the City, and for purposes of performing his responsibilities under Charter section 39.2, review Contractor's records to confirm contract compliance. Contractor shall make reasonable efforts to cooperate with Auditor's requests.

5.12 Safety Data Sheets. If specified by City in the solicitation or otherwise required by this Contract, Contractor must send with each shipment one (1) copy of the Safety Data Sheet (SDS) for each item shipped. Failure to comply with this procedure will be cause for immediate termination of the Contract for violation of safety procedures.

5.13 Project Personnel. Except as formally approved by the City, the key personnel identified in Contractor's bid or proposal shall be the individuals who will actually complete the work. Changes in staffing must be reported in writing and approved by the City.

5.13.1 Criminal Background Certification. Contractor certifies that all employees working on this Contract have had a criminal background check and that said employees are clear of any sexual and drug related convictions. Contractor further certifies that all employees hired by Contractor or a subcontractor shall be free from any felony convictions.

5.13.2 Photo Identification Badge. Contractor shall provide a company photo identification badge to any individual assigned by Contractor or subcontractor to perform services or deliver goods on City premises. Such badge must be worn at all times while on City premises. City reserves the right to require Contractor to pay fingerprinting fees for personnel assigned to work in sensitive areas. All employees shall turn in their photo identification badges to Contractor upon completion of services and prior to final payment of invoice.

5.14 Standards of Conduct. Contractor is responsible for maintaining standards of employee competence, conduct, courtesy, appearance, honesty, and integrity satisfactory to the City.

5.14.1 Supervision. Contractor shall provide adequate and competent supervision at all times during the Contract term. Contractor shall be readily available to meet with the City. Contractor shall provide the telephone numbers where its representative(s) can be reached.

5.14.2 City Premises. Contractor's employees and agents shall comply with all City rules and regulations while on City premises.

5.14.3 Removal of Employees. City may request Contractor immediately remove from assignment to the City any employee found unfit to perform duties at the City. Contractor shall comply with all such requests.

5.15 Licenses and Permits. Contractor shall, without additional expense to the City, be responsible for obtaining any necessary licenses, permits, certifications, accreditations, fees and approvals for complying with any federal, state, county, municipal, and other laws, codes, and regulations applicable to Contract performance. This includes, but is not limited to, any laws or regulations requiring the use of licensed contractors to perform parts of the work.

5.16 Contractor and Subcontractor Registration Requirements. Prior to the award of the Contract or Task Order, Contractor and Contractor's subcontractors and suppliers must register with the City's web-based vendor registration and bid management system. The City may not award the Contract until registration of all subcontractors and suppliers is complete. In the event this requirement is not met within the time frame specified by the City, the City reserves the right to rescind the Contract award and to make the award to the next responsive and responsible proposer of bidder.

ARTICLE VI INTELLECTUAL PROPERTY RIGHTS

6.1 Rights in Data. If, in connection with the services performed under this Contract, Contractor or its employees, agents, or subcontractors, create artwork, audio recordings, blueprints, designs, diagrams, documentation, photographs, plans, reports, software, source code, specifications, surveys, system designs, video recordings, or any other original works of authorship, whether written or readable by machine (Deliverable Materials), all rights of Contractor or its subcontractors in the Deliverable Materials, including, but not limited to publication, and registration of copyrights, and trademarks in the Deliverable Materials, are the sole property of City. Contractor, including its employees, agents, and subcontractors, may not use any Deliverable Material for purposes unrelated to Contractor's work on behalf of the City without prior written consent of City. Contractor may not publish or reproduce any Deliverable Materials, for purposes unrelated to Contractor's work on behalf of the City, without the prior written consent of the City.

6.2 Intellectual Property Rights Assignment. For no additional compensation, Contractor hereby assigns to City all of Contractor's rights, title, and interest in and to the content of the Deliverable Materials created by Contractor or its employees, agents, or subcontractors, including copyrights, in connection with the services performed under this Contract. Contractor

shall promptly execute and deliver, and shall cause its employees, agents, and subcontractors to promptly execute and deliver, upon request by the City or any of its successors or assigns at any time and without further compensation of any kind, any power of attorney, assignment, application for copyright, patent, trademark or other intellectual property right protection, or other papers or instruments which may be necessary or desirable to fully secure, perfect or otherwise protect to or for the City, its successors and assigns, all right, title and interest in and to the content of the Deliverable Materials. Contractor also shall cooperate and assist in the prosecution of any action or opposition proceeding involving such intellectual property rights and any adjudication of those rights.

6.3 Contractor Works. Contractor Works means tangible and intangible information and material that: (a) had already been conceived, invented, created, developed or acquired by Contractor prior to the effective date of this Contract; or (b) were conceived, invented, created, or developed by Contractor after the effective date of this Contract, but only to the extent such information and material do not constitute part or all of the Deliverable Materials called for in this Contract. All Contractor Works, and all modifications or derivatives of such Contractor Works, including all intellectual property rights in or pertaining to the same, shall be owned solely and exclusively by Contractor.

6.4 Subcontracting. In the event that Contractor utilizes a subcontractor(s) for any portion of the work that comprises the whole or part of the specified Deliverable Materials to the City, the agreement between Contractor and the subcontractor shall include a statement that identifies the Deliverable Materials as a "works for hire" as described in the United States Copyright Act of 1976, as amended, and that all intellectual property rights in the Deliverable Materials, whether arising in copyright, trademark, service mark or other forms of intellectual property rights, belong to and shall vest solely with the City. Further, the agreement between Contractor and its subcontractor shall require that the subcontractor, if necessary, shall grant, transfer, sell and assign, free of charge, exclusively to City, all titles, rights and interests in and to the Deliverable Materials, including all copyrights, trademarks and other intellectual property rights. City shall have the right to review any such agreement for compliance with this provision.

6.5 Intellectual Property Warranty and Indemnification. Contractor represents and warrants that any materials or deliverables, including all Deliverable Materials, provided under this Contract are either original, or not encumbered, and do not infringe upon the copyright, trademark, patent or other intellectual property rights of any third party, or are in the public domain. If Deliverable Materials provided hereunder become the subject of a claim, suit or allegation of copyright, trademark or patent infringement, City shall have the right, in its sole discretion, to require Contractor to produce, at Contractor's own expense, new non-infringing materials, deliverables or works as a means of remedying any claim of infringement in addition to any other remedy available to the City under law or equity. Contractor further agrees to indemnify, defend, and hold harmless the City, its officers, employees and agents from and against any and all claims, actions, costs, judgments or damages, of any type, alleging or threatening that any Deliverable Materials, supplies, equipment, services or works provided under this contract infringe the copyright, trademark, patent or other intellectual property or proprietary rights of any third party (Third Party Claim of Infringement). If a Third Party Claim

of infringement is threatened or made before Contractor receives payment under this Contract, City shall be entitled, upon written notice to Contractor, to withhold some or all of such payment.

6.6 Software Licensing. Contractor represents and warrants that the software, if any, as delivered to City, does not contain any program code, virus, worm, trap door, back door, time or clock that would erase data or programming or otherwise cause the software to become inoperable, inaccessible, or incapable of being used in accordance with its user manuals, either automatically, upon the occurrence of licensor-selected conditions or manually on command. Contractor further represents and warrants that all third party software, delivered to City or used by Contractor in the performance of the Contract, is fully licensed by the appropriate licensor.

6.7 Publication. Contractor may not publish or reproduce any Deliverable Materials, for purposes unrelated to Contractor's work on behalf of the City without prior written consent from the City.

6.8 Royalties, Licenses, and Patents. Unless otherwise specified, Contractor shall pay all royalties, license, and patent fees associated with the goods that are the subject of this solicitation. Contractor warrants that the goods, materials, supplies, and equipment to be supplied do not infringe upon any patent, trademark, or copyright, and further agrees to defend any and all suits, actions and claims for infringement that are brought against the City, and to defend, indemnify and hold harmless the City, its elected officials, officers, and employees from all liability, loss and damages, whether general, exemplary or punitive, suffered as a result of any actual or claimed infringement asserted against the City, Contractor, or those furnishing goods, materials, supplies, or equipment to Contractor under the Contract.

ARTICLE VII INDEMNIFICATION AND INSURANCE

7.1 Indemnification. To the fullest extent permitted by law, Contractor shall defend (with legal counsel reasonably acceptable to City), indemnify, protect, and hold harmless City and its elected officials, officers, employees, agents, and representatives (Indemnified Parties) from and against any and all claims, losses, costs, damages, injuries (including, without limitation, injury to or death of an employee of Contractor or its subcontractors), expense, and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, and litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, any goods provided or performance of services under this Contract by Contractor, any subcontractor, anyone directly or indirectly employed by either of them, or anyone that either of them control. Contractor's duty to defend, indemnify, protect and hold harmless shall not include any claims or liabilities arising from the sole negligence or willful misconduct of the Indemnified Parties.

7.2 Insurance. Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or

in connection with the performance of the work hereunder and the results of that work by Contractor, his agents, representatives, employees or subcontractors.

Contractor shall provide, at a minimum, the following:

7.2.1 Commercial General Liability. Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury, and personal and advertising injury with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

7.2.2 Commercial Automobile Liability. Insurance Services Office Form Number CA 0001 covering Code 1 (any auto) or, if Contractor has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than \$1,000,000 per accident for bodily injury and property damage.

7.2.3 Workers' Compensation. Insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

7.2.4 Professional Liability (Errors and Omissions). For consultant contracts, insurance appropriate to Consultant's profession, with limit no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate.

If Contractor maintains broader coverage and/or higher limits than the minimums shown above, City requires and shall be entitled to the broader coverage and/or the higher limits maintained by Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.

7.2.5 Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions:

7.2.5.1 Additional Insured Status. The City, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 if a later edition is used).

7.2.5.2 Primary Coverage. For any claims related to this contract, Contractor's insurance coverage shall be primary coverage at least as broad as ISO CG 20 01 04 13 as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by City, its officers, officials, employees, or volunteers shall be excess of Contractor's insurance and shall not contribute with it.

7.2.5.3 Notice of Cancellation. Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to City.

7.2.5.4 Waiver of Subrogation. Contractor hereby grants to City a waiver of any right to subrogation which the Workers' Compensation insurer of said Contractor may acquire against City by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

7.2.5.5 Claims Made Policies (applicable only to professional liability). The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, Contractor must purchase "extended reporting" coverage for a minimum of five (5) years after completion of work.

7.3 Self Insured Retentions. Self-insured retentions must be declared to and approved by City. City may require Contractor to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City.

7.4 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-VI, unless otherwise acceptable to City.

City will accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of California and is included on the List of Approved Surplus Lines Insurers (LASLI list). All policies of insurance carried by non-admitted carriers are subject to all of the requirements for policies of insurance provided by admitted carriers described herein.

7.5 Verification of Coverage. Contractor shall furnish City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive Contractor's obligation to provide them. City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

7.6 Special Risks or Circumstances. City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

7.7 Additional Insurance. Contractor may obtain additional insurance not required by this Contract.

7.8 Excess Insurance. All policies providing excess coverage to City shall follow the form of the primary policy or policies including but not limited to all endorsements.

7.9 Subcontractors. Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that City is an additional insured on insurance required from subcontractors. For CGL coverage, subcontractors shall provide coverage with a format at least as broad as the CG 20 38 04 13 endorsement.

ARTICLE VIII BONDS

8.1 Payment and Performance Bond. Prior to the execution of this Contract, City may require Contractor to post a payment and performance bond (Bond). The Bond shall guarantee Contractor's faithful performance of this Contract and assure payment to contractors, subcontractors, and to persons furnishing goods and/or services under this Contract.

8.1.1 Bond Amount. The Bond shall be in a sum equal to twenty-five percent (25%) of the Contract amount, unless otherwise stated in the Specifications. City may file a claim against the Bond if Contractor fails or refuses to fulfill the terms and provisions of the Contract.

8.1.2 Bond Term. The Bond shall remain in full force and effect at least until complete performance of this Contract and payment of all claims for materials and labor, at which time it will convert to a ten percent (10%) warranty bond, which shall remain in place until the end of the warranty periods set forth in this Contract. The Bond shall be renewed annually, at least sixty (60) days in advance of its expiration, and Contractor shall provide timely proof of annual renewal to City.

8.1.3 Bond Surety. The Bond must be furnished by a company authorized by the State of California Department of Insurance to transact surety business in the State of California and which has a current A.M. Best rating of at least "A-, VIII."

8.1.4 Non-Renewal or Cancellation. The Bond must provide that City and Contractor shall be provided with sixty (60) days' advance written notice in the event of non-renewal, cancellation, or material change to its terms. In the event of non-renewal, cancellation, or material change to the Bond terms, Contractor shall provide City with evidence of the new source of surety within twenty-one (21) calendar days after the date of the notice of non-renewal, cancellation, or material change. Failure to maintain the Bond, as required herein, in full force

and effect as required under this Contract, will be a material breach of the Contract subject to termination of the Contract.

8.2 Alternate Security. City may, at its sole discretion, accept alternate security in the form of an endorsed certificate of deposit, a money order, a certified check drawn on a solvent bank, or other security acceptable to the Purchasing Agent in an amount equal to the required Bond.

ARTICLE IX CITY-MANDATED CLAUSES AND REQUIREMENTS

9.1 Contractor Certification of Compliance. By signing this Contract, Contractor certifies that Contractor is aware of, and will comply with, these City-mandated clauses throughout the duration of the Contract.

9.1.1 Drug-Free Workplace Certification. Contractor shall comply with City's Drug-Free Workplace requirements set forth in Council Policy 100-17, which is incorporated into the Contract by this reference.

9.1.2 Contractor Certification for Americans with Disabilities Act (ADA) and State Access Laws and Regulations: Contractor shall comply with all accessibility requirements under the ADA and under Title 24 of the California Code of Regulations (Title 24). When a conflict exists between the ADA and Title 24, Contractor shall comply with the most restrictive requirement (i.e., that which provides the most access). Contractor also shall comply with the City's ADA Compliance/City Contractors requirements as set forth in Council Policy 100-04, which is incorporated into this Contract by reference. Contractor warrants and certifies compliance with all federal and state access laws and regulations and further certifies that any subcontract agreement for this contract contains language which indicates the subcontractor's agreement to abide by the provisions of the City's Council Policy and any applicable access laws and regulations.

9.1.3 Non-Discrimination Requirements.

9.1.3.1 Compliance with City's Equal Opportunity Contracting Program (EOCP). Contractor shall comply with City's EOCP Requirements. Contractor shall not discriminate against any employee or applicant for employment on any basis prohibited by law. Contractor shall provide equal opportunity in all employment practices. Prime Contractors shall ensure that their subcontractors comply with this program. Nothing in this Section shall be interpreted to hold a Prime Contractor liable for any discriminatory practice of its subcontractors.

9.1.3.2 Non-Discrimination Ordinance. Contractor shall not discriminate on the basis of race, gender, gender expression, gender identity, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring or treatment of subcontractors, vendors or suppliers. Contractor shall provide equal opportunity for subcontractors to participate in subcontracting opportunities. Contractor understands and agrees that violation of this clause shall be considered a material breach of the Contract and may result

in Contract termination, debarment, or other sanctions. Contractor shall ensure that this language is included in contracts between Contractor and any subcontractors, vendors and suppliers.

9.1.3.3 Compliance Investigations. Upon City's request, Contractor agrees to provide to City, within sixty calendar days, a truthful and complete list of the names of all subcontractors, vendors, and suppliers that Contractor has used in the past five years on any of its contracts that were undertaken within San Diego County, including the total dollar amount paid by Contractor for each subcontract or supply contract. Contractor further agrees to fully cooperate in any investigation conducted by City pursuant to City's Nondiscrimination in Contracting Ordinance. Contractor understands and agrees that violation of this clause shall be considered a material breach of the Contract and may result in Contract termination, debarment, and other sanctions.

9.1.4 Equal Benefits Ordinance Certification. Unless an exception applies, Contractor shall comply with the Equal Benefits Ordinance (EBO) codified in the San Diego Municipal Code (SDMC). Failure to maintain equal benefits is a material breach of the Contract.

9.1.5 Contractor Standards. Contractor shall comply with Contractor Standards provisions codified in the SDMC. Contractor understands and agrees that violation of Contractor Standards may be considered a material breach of the Contract and may result in Contract termination, debarment, and other sanctions.

9.1.6 Noise Abatement. Contractor shall operate, conduct, or construct without violating the City's Noise Abatement Ordinance codified in the SDMC.

9.1.7 Storm Water Pollution Prevention Program. Contractor shall comply with the City's Storm Water Management and Discharge Control provisions codified in Division 3 of Chapter 4 of the SDMC, as may be amended, and any and all applicable Best Management Practice guidelines and pollution elimination requirements in performing or delivering services at City owned, leased, or managed property, or in performance of services and activities on behalf of City regardless of location.

Contractor shall comply with the City's Jurisdictional Urban Runoff Management Plan encompassing Citywide programs and activities designed to prevent and reduce storm water pollution within City boundaries as adopted by the City Council on January 22, 2008, via Resolution No. 303351, as may be amended.

Contractor shall comply with each City facility or work site's Storm Water Pollution Prevention Plan, as applicable, and institute all controls needed while completing the services to minimize any negative impact to the storm water collection system and environment.

9.1.8 Service Worker Retention Ordinance. If applicable, Contractor shall comply with the Service Worker Retention Ordinance (SWRO) codified in the SDMC.

9.1.9 Product Endorsement. Contractor shall comply with Council Policy 000-41 which requires that other than listing the City as a client and other limited endorsements, any advertisements, social media, promotions or other marketing referring to the City as a user of a product or service will require prior written approval of the Mayor or designee. Use of the City Seal or City logos is prohibited.

9.1.10 Business Tax Certificate. Unless the City Treasurer determines in writing that a contractor is exempt from the payment of business tax, any contractor doing business with the City of San Diego is required to obtain a Business Tax Certificate (BTC) and to provide a copy of its BTC to the City before a Contract is executed.

9.1.11 Equal Pay Ordinance. Unless an exception applies, Contractor shall comply with the Equal Pay Ordinance codified in San Diego Municipal Code sections 22.4801 through 22.4809. Contractor shall certify in writing that it will comply with the requirements of the EPO.

9.1.11.1 Contractor and Subcontract Requirement. The Equal Pay Ordinance applies to any subcontractor who performs work on behalf of a Contractor to the same extent as it would apply to that Contractor. Any Contractor subject to the Equal Pay Ordinance shall require all of its subcontractors to certify compliance with the Equal Pay Ordinance in its written subcontracts.

ARTICLE X CONFLICT OF INTEREST AND VIOLATIONS OF LAW

10.1 Conflict of Interest Laws. Contractor is subject to all federal, state and local conflict of interest laws, regulations, and policies applicable to public contracts and procurement practices including, but not limited to, California Government Code sections 1090, *et. seq.* and 81000, *et. seq.*, and the Ethics Ordinance, codified in the SDMC. City may determine that Contractor must complete one or more statements of economic interest disclosing relevant financial interests. Upon City's request, Contractor shall submit the necessary documents to City.

10.2 Contractor's Responsibility for Employees and Agents. Contractor is required to establish and make known to its employees and agents appropriate safeguards to prohibit employees from using their positions for a purpose that is, or that gives the appearance of being, motivated by the desire for private gain for themselves or others, particularly those with whom they have family, business or other relationships.

10.3 Contractor's Financial or Organizational Interests. In connection with any task, Contractor shall not recommend or specify any product, supplier, or contractor with whom Contractor has a direct or indirect financial or organizational interest or relationship that would violate conflict of interest laws, regulations, or policies.

10.4 Certification of Non-Collusion. Contractor certifies that: (1) Contractor's bid or proposal was not made in the interest of or on behalf of any person, firm, or corporation not identified; (2) Contractor did not directly or indirectly induce or solicit any other bidder or proposer to put in a sham bid or proposal; (3) Contractor did not directly or indirectly induce or

solicit any other person, firm or corporation to refrain from bidding; and (4) Contractor did not seek by collusion to secure any advantage over the other bidders or proposers.

10.5 Hiring City Employees. This Contract shall be unilaterally and immediately terminated by City if Contractor employs an individual who within the twelve (12) months immediately preceding such employment did in his/her capacity as a City officer or employee participate in negotiations with or otherwise have an influence on the selection of Contractor.

ARTICLE XI DISPUTE RESOLUTION

11.1 Mediation. If a dispute arises out of or relates to this Contract and cannot be settled through normal contract negotiations, Contractor and City shall use mandatory non-binding mediation before having recourse in a court of law.

11.2 Selection of Mediator. A single mediator that is acceptable to both parties shall be used to mediate the dispute. The mediator will be knowledgeable in the subject matter of this Contract, if possible.

11.3 Expenses. The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the mediation, including required traveling and other expenses of the mediator, and the cost of any proofs or expert advice produced at the direct request of the mediator, shall be borne equally by the parties, unless they agree otherwise.

11.4 Conduct of Mediation Sessions. Mediation hearings will be conducted in an informal manner and discovery will not be allowed. The discussions, statements, writings and admissions will be confidential to the proceedings (pursuant to California Evidence Code sections 1115 through 1128) and will not be used for any other purpose unless otherwise agreed by the parties in writing. The parties may agree to exchange any information they deem necessary. Both parties shall have a representative attend the mediation who is authorized to settle the dispute, though City's recommendation of settlement may be subject to the approval of the Mayor and City Council. Either party may have attorneys, witnesses or experts present.

11.5 Mediation Results. Any agreements resulting from mediation shall be memorialized in writing. The results of the mediation shall not be final or binding unless otherwise agreed to in writing by the parties. Mediators shall not be subject to any subpoena or liability, and their actions shall not be subject to discovery.

ARTICLE XII MANDATORY ASSISTANCE

12.1 Mandatory Assistance. If a third party dispute or litigation, or both, arises out of, or relates in any way to the services provided to the City under a Contract, Contractor, its agents, officers, and employees agree to assist in resolving the dispute or litigation upon City's request. Contractor's assistance includes, but is not limited to, providing professional consultations,

attending mediations, arbitrations, depositions, trials or any event related to the dispute resolution and/or litigation.

12.2 Compensation for Mandatory Assistance. City will compensate Contractor for fees incurred for providing Mandatory Assistance. If, however, the fees incurred for the Mandatory Assistance are determined, through resolution of the third party dispute or litigation, or both, to be attributable in whole, or in part, to the acts or omissions of Contractor, its agents, officers, and employees, Contractor shall reimburse City for all fees paid to Contractor, its agents, officers, and employees for Mandatory Assistance.

12.3 Attorneys' Fees Related to Mandatory Assistance. In providing City with dispute or litigation assistance, Contractor or its agents, officers, and employees may incur expenses and/or costs. Contractor agrees that any attorney fees it may incur as a result of assistance provided under Section 12.2 are not reimbursable.

ARTICLE XIII MISCELLANEOUS

13.1 Headings. All headings are for convenience only and shall not affect the interpretation of this Contract.

13.2 Non-Assignment. Contractor may not assign the obligations under this Contract, whether by express assignment or by sale of the company, nor any monies due or to become due under this Contract, without City's prior written approval. Any assignment in violation of this paragraph shall constitute a default and is grounds for termination of this Contract at the City's sole discretion. In no event shall any putative assignment create a contractual relationship between City and any putative assignee.

13.3 Independent Contractors. Contractor and any subcontractors employed by Contractor are independent contractors and not agents of City. Any provisions of this Contract that may appear to give City any right to direct Contractor concerning the details of performing or providing the goods and/or services, or to exercise any control over performance of the Contract, shall mean only that Contractor shall follow the direction of City concerning the end results of the performance.

13.4 Subcontractors. All persons assigned to perform any work related to this Contract, including any subcontractors, are deemed to be employees of Contractor, and Contractor shall be directly responsible for their work.

13.5 Covenants and Conditions. All provisions of this Contract expressed as either covenants or conditions on the part of City or Contractor shall be deemed to be both covenants and conditions.

13.6 Compliance with Controlling Law. Contractor shall comply with all applicable local, state, and federal laws, regulations, and policies. Contractor's act or omission in violation of applicable local, state, and federal laws, regulations, and policies is grounds for contract

termination. In addition to all other remedies or damages allowed by law, Contractor is liable to City for all damages, including costs for substitute performance, sustained as a result of the violation. In addition, Contractor may be subject to suspension, debarment, or both.

13.7 Governing Law. The Contract shall be deemed to be made under, construed in accordance with, and governed by the laws of the State of California without regard to the conflicts or choice of law provisions thereof.

13.8 Venue. The venue for any suit concerning solicitations or the Contract, the interpretation of application of any of its terms and conditions, or any related disputes shall be in the County of San Diego, State of California.

13.9 Successors in Interest. This Contract and all rights and obligations created by this Contract shall be in force and effect whether or not any parties to the Contract have been succeeded by another entity, and all rights and obligations created by this Contract shall be vested and binding on any party's successor in interest.

13.10 No Waiver. No failure of either City or Contractor to insist upon the strict performance by the other of any covenant, term or condition of this Contract, nor any failure to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of this Contract, shall constitute a waiver of any such breach of such covenant, term or condition. No waiver of any breach shall affect or alter this Contract, and each and every covenant, condition, and term hereof shall continue in full force and effect without respect to any existing or subsequent breach.

13.11 Severability. The unenforceability, invalidity, or illegality of any provision of this Contract shall not render any other provision of this Contract unenforceable, invalid, or illegal.

13.12 Drafting Ambiguities. The parties acknowledge that they have the right to be advised by legal counsel with respect to the negotiations, terms and conditions of this Contract, and the decision of whether to seek advice of legal counsel with respect to this Contract is the sole responsibility of each party. This Contract shall not be construed in favor of or against either party by reason of the extent to which each party participated in the drafting of the Contract.

13.13 Amendments. Neither this Contract nor any provision hereof may be changed, modified, amended or waived except by a written agreement executed by duly authorized representatives of City and Contractor. Any alleged oral amendments have no force or effect. The Purchasing Agent must sign all Contract amendments.

13.14 Conflicts Between Terms. If this Contract conflicts with an applicable local, state, or federal law, regulation, or court order, applicable local, state, or federal law, regulation, or court order shall control. Varying degrees of stringency among the main body of this Contract, the exhibits or attachments, and laws, regulations, or orders are not deemed conflicts, and the most stringent requirement shall control. Each party shall notify the other immediately upon the identification of any apparent conflict or inconsistency concerning this Contract.

13.15 Survival of Obligations. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with this Contract, as well as all continuing obligations indicated in this Contract, shall survive, completion and acceptance of performance and termination, expiration or completion of the Contract.

13.16 Confidentiality of Services. All services performed by Contractor, and any sub-contractor(s) if applicable, including but not limited to all drafts, data, information, correspondence, proposals, reports of any nature, estimates compiled or composed by Contractor, are for the sole use of City, its agents, and employees. Neither the documents nor their contents shall be released by Contractor or any subcontractor to any third party without the prior written consent of City. This provision does not apply to information that: (1) was publicly known, or otherwise known to Contractor, at the time it was disclosed to Contractor by City; (2) subsequently becomes publicly known through no act or omission of Contractor; or (3) otherwise becomes known to Contractor other than through disclosure by City.

13.17 Insolvency. If Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, Contractor agrees to furnish, by certified mail or electronic commerce method authorized by the Contract, written notification of the bankruptcy to the Purchasing Agent and the Contract Administrator responsible for administering the Contract. This notification shall be furnished within five (5) days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of City contract numbers and contracting offices for all City contracts against which final payment has not been made. This obligation remains in effect until final payment is made under this Contract.

13.18 No Third Party Beneficiaries. Except as may be specifically set forth in this Contract, none of the provisions of this Contract are intended to benefit any third party not specifically referenced herein. No party other than City and Contractor shall have the right to enforce any of the provisions of this Contract.

13.19 Actions of City in its Governmental Capacity. Nothing in this Contract shall be interpreted as limiting the rights and obligations of City in its governmental or regulatory capacity.